

ALVARADOSMITH
A PROFESSIONAL CORPORATION
LOS ANGELES

1 THEODORE E. BACON (CA Bar No. 115395)
tbacon@alvaradosmith.com
2 MIKEL A. GLAVINOVICH (CA Bar No. 186590)
mglavinovich@alvaradosmith.com
3 IRMA L. MARTINEZ (CA Bar No. 265825)
imartinez@alvaradosmith.com
4 ALVARADOSMITH
A Professional Corporation
5 633 W. Fifth Street, Suite 1100
Los Angeles, CA 90071
6 Tel. (213) 229-2400
Fax. (213) 229-2499
7

Attorneys for Defendant
8 JPMORGAN CHASE BANK, N.A., AN ACQUIRER OF
CERTAIN ASSETS AND LIABILITIES OF
9 WASHINGTON MUTUAL BANK FROM THE
FEDERAL DEPOSIT INSURANCE CORPORATION
10 ACTING AS RECEIVER

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13 SEPEHR TORABI,

14 Plaintiff,

15 v.

16 WASHINGTON MUTUAL BANK, CHASE
BANK NA; CITIBANK NA as trustee for
17 WAMU 2004-AR9, WAMU 2004, DOES 1-25

18 Defendants.

Case No. 09-CV-02838-JAH-BLM

Hon. John A. Houston

**REPLY MEMORANDUM RE: NON-
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS FIRST
AMENDED COMPLAINT PURSUANT
TO FRCP 12(b)(6); DECLARATION OF
IRMA L. MARTINEZ**

DATE: January 30, 2012 [Reserved]
TIME: 2:30 p.m.
CRTRM: 11 (2nd Floor)

Action Filed: December 17, 2009

28

REPLY MEMORANDUM OF POINTS AND AUTHORITIES

Defendant JPMORGAN CHASE BANK, N.A., AN ACQUIRER OF CERTAIN ASSETS AND LIABILITIES OF WASHINGTON MUTUAL BANK FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION ACTING AS RECEIVER (“JPMorgan”), respectfully submits this Reply Memorandum re: Non-Opposition to its Motion to Dismiss the First Amended Complaint of plaintiff Sepehr Torabi (“Plaintiff”) pursuant to FRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

I. PLAINTIFF FAILED TO FILE ANY OPPOSITION TO THE MOTION TO DISMISS, THEREBY CONSENTING TO THE GRANTING OF THE MOTION.

JPMorgan filed and served its Motion to Dismiss on December 5, 2011. (*See* Docket No. 24; *see also*, Declaration of Irma L. Martinez (“Martinez Decl.”), ¶ 2.) The Motion to Dismiss has been noticed for January 30, 2012, at 2:30 p.m. in courtroom “11”. (*See* Martinez Decl., ¶ 2.)

Southern District of California Local Rule (“Local Rules”) 7.1.e.2. requires a party opposing a motion to file and serve a written opposition with the Court “not later than fourteen (14) *calendar* days prior to the noticed hearing.” (Emphasis in original.) Therefore, Plaintiff’s opposition to the Motion to Dismiss was due by January 16, 2012. (*See* Martinez Decl., ¶ 3.)

Local Rule 7.1.f.3.c. states that, “[i]f an opposing party failed to file the papers in the manner required by Civil Local Rule 7.1.e.2., that failure may constitute a consent to the granting of a motion or other request for ruling by the court.”

To date, JPMorgan has not received any opposition to the Motion to Dismiss. (*See* Martinez Decl., ¶ 3.) The case docket on PACER also indicates that no opposition has been filed. (*See* Docket; *see also* Martinez Decl., ¶ 3.) Therefore, the Court should not consider any belated opposition from Plaintiff, and the Motion to Dismiss must be granted in its entirety without leave to amend. *See* Local Rule 7.1.e.2, 7.1.f.3.c.

///

///

///

///

1 **II. CONCLUSION**

2 JPMorgan respectfully requests that its Motion to Dismiss the First Amended Complaint be
3 granted in its entirety without leave to amend.

4
5 Respectfully submitted,

6 DATED: January 23, 2012

ALVARADO SMITH
A Professional Corporation

7
8
9 By: /s/ Theodore E. Bacon

THEODORE E. BACON
MIKEL A. GLAVINOVICH
IRMA L. MARTINEZ

11 Attorneys for Defendant
12 JPMORGAN CHASE BANK, N.A., FOR
13 ITSELF AND AS AN ACQUIRER OF
14 CERTAIN ASSETS AND LIABILITIES OF
15 WASHINGTON MUTUAL BANK FROM THE
16 FEDERAL DEPOSIT INSURANCE
17 CORPORATION ACTING AS RECEIVER

ALVARADO SMITH
A PROFESSIONAL CORPORATION
LOS ANGELES

DECLARATION OF IRMA L. MARTINEZ

I, Irma L. Martinez, declare as follows:

1. I am an associate with the law firm of AlvaradoSmith, a Professional Corporation, attorneys of record herein for defendant JPMORGAN CHASE BANK, N.A., AN ACQUIRER OF CERTAIN ASSETS AND LIABILITIES OF WASHINGTON MUTUAL BANK FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION ACTING AS RECEIVER ("JPMorgan"). I have been duly admitted to practice law in the State of California and the United States District Court for the Southern District of California. I am submitting this Declaration in support of JPMorgan's Reply Memorandum Re: Non-Opposition to its Motion to Dismiss the First Amended Complaint of plaintiff Sepehr Torabi ("Plaintiff"). If called as a witness in this matter, I am competent to testify of my own personal knowledge, to the best of my recollection, as to the matters set forth in this Declaration.

2. JPMorgan filed and served its Motion to Dismiss on December 5, 2011. The Motion to Dismiss has been noticed for January 30, 2012, at 2:30 p.m. in courtroom "11".

3. Plaintiff's opposition to the Motion to Dismiss was due by January 16, 2012. To date, JPMorgan has not received any opposition to the Motion to Dismiss. The case docket on PACER also indicates that no opposition has been filed.

I declare under penalty of perjury under the laws of the State of California and the United States that this declaration is true and correct.

Executed on January 23, 2012, at Los Angeles, California.

/s/ Irma L. Martinez
IRMA L. MARTINEZ

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is **AlvaradoSmith, 633 W. Fifth Street, Suite 1100, Los Angeles, CA 90071.**

On January 23, 2012, I served the foregoing document described as **REPLY MEMORANDUM RE: NON-OPPOSITION TO DEFENDANT'S MOTION TO DISMISS FIRST AMENDED COMPLAINT PURSUANT TO FRCP 12(B)(6); DECLARATION OF IRMA L. MARTINEZ** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

Sepehr Torabi, *Pro Se*
3253 Caminito East Bluff #26
La Jolla, CA 92037
Tel. (858) 518-1515

☐ **BY REGULAR MAIL:** I deposited such envelope in the mail at 633 W. Fifth Street, Los Angeles, California 90071. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

☒ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or FedEx Drop Box located at 633 W. Fifth Street, Los Angeles, California 90071. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on January 23, 2012, at Los Angeles, California.

/s/ Steve Chang

Steve Chang